IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.15882 of 2007
RABINDRA NATH MISHRA @ RABINDRA MISHRA
Versus
STATE OF BIHAR & ANR

For the Petitioner : M/s. Y.V. Giri, Senior Advocate and Raju Giri, Advocate.
For the State : Mr. Jharkhandi Upadhayay, A.P.P.
For O.P. No.2 : Mr. Basant Kumar Singh, Advocate.

O R D E R

The petitioner herein prays for the quashing of the entire prosecution case, being Sessions Trial No.143 of 2006, arising out of Manjhi P.S. Case No.28 of 1990 including the order dated 17.2.2007 passed therein by Sri Satyendra Kumar Pathak, the learned Presiding Judge, Fast Track Court No.IV, Saran at Chapra, whereby he has been pleased to reject the discharge petition filed on behalf of the petitioner under Section 227 Cr.P.C.

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One Pranay Kumar Malik, an Assistant School Teacher, deputed as the Presiding Officer at Booth No.175 of the Manjhi Assembly Constituency , impleaded herein as O.P. No.2, gave his fardbeyan at about 10.15 P.M. on 27.2.1990 inter alia alleging that earlier that day the pooling in his booth as also in the adjacent Booth No.176 had started on time when at about 9.30 A.M. some 20-30 unknown persons variously armed with gun, rifles, revolvers etc. suddenly arrived on two jeeps and resorted to firing as a result whereof the huge number of intending voters started fleeing from the booths and they were chased by the miscreants. The informant

alongwith the other polling officials claimed to have fled and taken refuge in the nearby village. It is said that after some 10 minutes when the episode was over and the miscreants had departed by jeep towards the west he and the other polling officials moved towards their booths and in doing so they noticed in the east of the booths a man lying dead near the banana clumps with gun fire injuries in his abdominal region and back. The identification of the dead person was not known but people rumuored that he belonged to Chand Diyara area. On returning to his booth the complainant/informant detected that four boxes in which ballots had been cast had been looted away. The Presiding Officer of the adjacent Booth No.176 also reported that some boxes and ballot papers had been looted from his booth. The informant failed to give the names or identification of any of the miscreants.

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On the basis of the said fardbeyan the aforesaid Manjhi P.S. Case was registered under Sections 302/307/324 and other allied sections of the Penal Code, Section 27 of the Arms Act and Section 136(2) of the Representation of the People Act.

It has been submitted on behalf of the petitioners that he was an independent candidate for the Manjhi Assembly Constituency and has been falsely implicated in this case at the behest of his political rivals due to enmity and political rivalry. While assailing the impugned order rejecting his prayer for discharge, the learned counsel for the petitioner sought to submit that the learned court had erroneously relied on various paragraphs of the case diary while

failing to appreciate that in these paragraphs the statements were of those witnesses who were political rivals of the petitioner and were nursing personal grudge against him. It was further submitted that one Mahesh Prasad Yadav whose statement was recorded in paragraph 3 of the case diary had tried to file a F.I.R. later on in back date implicating the petitioner and this Mahesh Prasad happens to be a polling agent of the Congress candidate. It was further submitted that none of the independent eye witnesses had named the petitioner which would be apparent from paragraphs 19, 22 to 28 and 30 of the case diary. Finally, an alibi of the petitioner was pleaded by stating that he was not present at the place of occurrence at the relevant time and was, in fact, in other parts of the constituency which were far away and could be verified from paragraphs 169 to 173 of the case diary.

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The fact remains that some of the people whose statement has been recorded under Section 161 Cr.P.C. in course of investigation have named the petitioner and have also testified regarding his complicity in the occurrence. It is another matter whether they are inimical by virtue of enmity or by reason of being supporters of political rivals. Similarly, the evidence of the witnesses who have testified about the petitioner being not available at the place of occurrence at the relevant time is also a question of fact. All these statements for and against can only be judged in course of the trial where the allegations can be proved or disproved by leading evidence. Even the alibi of the petitioner, as pleaded by the learned counsel for the petitioner, is a matter which can be looked into in course of the

trial and not at this stage and that too in a proceeding under Section 482 Cr.P.C.

The Supreme Court in the case of the State of Bihar Vs. Ramesh Singh (AIR 1977 SC 2018) while examining the scope of Sections 227 and 228 Cr.P.C. observed :

" Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S. 227 or S.228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for

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proceeding against the accused……..”

In the instant case from the case diary and the statements of some of the witnesses recorded under Section 161 Cr.P.C. a prima facie case against the petitioner appears to have been made out and at this stage it cannot be taken for granted that the evidence led before the Investigating Officer was intrinsically untrustworthy.

Due regard being had to the facts and the circumstances of the case and the law laid down by the Supreme Court which even today holds good , I find no merit in this application which is dismissed.

Let records of the Sessions Trial which had been called for and is placed with the records of this application be sent down forthwith so that the trial can proceed and in view of the long passage of time it is expected that the trial court will show some urgency in disposal of the trial as expeditiously as possible.

(Abhijit Sinha,J)

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Patna High Court, Patna.
Dated: The 20th of August, 2008.
Pradeep Srivastava/A.F.R.